IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1359 OF 2006

Shri Anand Ramchandra Gupta ....Petitioner

V/s

State of Maharashtra & Ors. ....Respondents.

Mr. Madhav J. Jamdar for the Petitioner.

Mr. Y.M Nakhwa, APP for the State.

Mr. S.P. Kadam for Respondent No.3.

CORAM: V.M. KANADE, J.
DATE : 21st August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner, learned APP for the State and the learned Counsel appearing on behalf of Respondent No.3.

2. Petitioner is the original accused No.1. The offence punishable under sections 420 and 201 read with other provisions of IPC was registered against the Petitioner and the other accused. It is the case of the Petitioner that a complaint was lodged in 1983. No steps were taken by the prosecution and the matter remained pending for quite some time and during this period the Petitioner migrated to the State of Maharashtra. In the meantime, trial against other

accused proceeded. In the said trail against remaining accused, the Trial Court by order dated 13/4/2000 was pleased to acquit original accused Nos. 2 to 6 of the offences punishable under sections 420, 120-B and 201 of the Indian Penal Code and further direction was given to pay certain amounts to the said accused as indicated in the operative part of the order. In the meantime, separate applications were filed by the original complainant and the other witnesses for return of the property during the pendecy of the said case. Those applications were allowed by the Trial court by order dated 18/05/2002 and a direction was given to the Nazir of the Court to encash the remaining Fixed Deposit Receipts and to pay the amounts to the applicants on the said applicants executing an undertaking that they would return the amount if direction is given by the Court.

3. The Petitioner who is original accused No.1, later on, came back to Maharasthra and his case was reopened and, at the moment, the said case is pending. The learned Counsel for the Petitioner invited my attention to para 21 of the order dated 13/4/2000 passed by the Trial Court in Reg. Cri. Case Nos. 42/87, 43/87 & 44/87, which reads as under:-

> "21. The accused No.1 - Anand Gupta is absconded and it appears that the huge amount is attached from him. At the time of argument I am told that huge amount was transferred to the Civil

> Court and that amount was paid to the decree holders towards satisfaction of decrees and remaining amount is kept in bank. No any other person is claiming property at present except the said accused. Therefore, it will be proper to pass order regarding remaining muddemal property on their appearance and after hearing them."

The learned Counsel for the Petitioner submits that the Petitioner is entitled to the amount which has been seized from him and that the order passed by the Trial Court in favour of the complainant and other witnesses is liable to be set aside. It is also submitted that the amount which is paid to other accused by virtue of order dated 13/04/2000 in Regular Criminal Case Nos. 42/87, 43/87 and 44/87 also should be returned to him. It is submitted that the Petitioner herein has contested the applications below Exhibits-552, 555 and 562 which were filed by the complainant and the other witnesses. It is an admitted position that no separate application was filed by the Petitioner herein for return of the property during the pendency of his criminal case.

4. In my view, it would be appropriate if the Petitioner files an application under section 451 and the Trail Court, on his application, considers the matter afresh regarding the payment of the said amount to the applicants in applications

viz Exhibits 552, 555 and 562 and accused Nos. 2 to 6 pursuant to the order passed dated 18/05/2002. The Trial Court shall issue appropriate notices to the accused Nos. 2 to 6 as also the applicants in Exhibits 552, 555 and 562. It is clarified that if the amounts have already been paid to these applicants and accused pursuant to the order passed by the Trial Court then, in that event, no further orders are necessary. However, if the payment has not been made so far then the said amount shall not be disbursed to the said applicants for a period of 8 weeks from today and subject to further orders that may be passed in application under section 451, if taken out by the Petitioner in his pending criminal case.

5. With the above directions Writ Petition is finally disposed of.

(V.M. KANADE, J.)